

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the petition for) DECLARATORY RULING
declaratory ruling on the issue of)
whether the act of administering)
and monitoring a patient during)
IV conscious sedation is within)
the scope of practice of a)
respiratory care practitioner)

1. On February 14, 2002, the Board of Respiratory Care Practitioners, (Board) published a petition for Declaratory Ruling in the above-entitled matter at page 407, 2002 Montana Administrative Register, issue number 3.

2. On March 28, 2002, the Board published a Notice of Continuance of Hearing on Petition for Declaratory Ruling at page 961, 2002 Montana Administrative Register, issue number 6.

3. On April 22, 2002, the Board presided over a hearing in this matter to consider written and oral testimony from interested individuals. Written commentary was allowed until 5:00 PM on April 30, 2002. On July 8, 2002, the Board made a motion to issue this declaratory ruling. Then subsequent questions came in and the Board determined to have further deliberations regarding comments and testimony on December 6, 2002.

Issue

4. Petitioner requested a ruling on whether the act of administering and monitoring a patient during IV conscious sedation is within the scope of a respiratory care practitioner.

Summary of Comments

5. The Board received numerous written comments as well as testimony supported by demonstrative and written evidence during the hearing held on April 22, 2002.

6. Petitioner indicated that the Board of Nursing believed that Respiratory Care Practitioners (RCPs) should not be actively administering intravenous medication to conscious patients and monitoring them during its use. She indicated that the Board of Nursing would offer a specific definition of intravenous conscious sedation before close of the written comment period.

7. One commenter presented written documentation of a course curriculum and advocated RCPs administering IV conscious sedation. The Board was appreciative of the commentary.

8. One commenter submitted written testimony on behalf of the Montana Nurses' Association that RCPs should not administer conscious IV sedation and monitor the patient without training beyond their licensure. The Board accepted the commentary and in its response determined that training of RCPs was at least as comprehensive as training for RNs.

9. One commenter testified in favor of multi-skilling, multi-credentialing and cross-training of licensed respiratory and medical personnel. The Board appreciated the comment and expressed a similar desire on behalf of the public and its expectations in treatment.

10. Another commenter testified that facility trained RCPs in the hospital have been performing IV conscious sedation since 1997 and administer conscious sedation more often than any other nursing department except endoscopy. He went on to state that he believes RCPs have the training necessary to perform conscious sedation. The Board agreed and expressed its appreciation for this comment.

11. One commenter filed letters in support of RCPs performing conscious IV sedation from physicians in Great Falls and Bozeman. The Board expressed its appreciation for the input.

12. Another commenter stated that RCPs coming out of school are not prepared to do conscious sedation without first receiving advanced training but that Montana's continuing professional education requirement for RCPs exceeds the national requirements for current certification. The Board agreed.

13. One commenter submitted a comprehensive study done from Indiana University Center for Survey and Research which concluded that respiratory care instruction is very limited in nursing programs when compared to respiratory therapy programs. The Board was again appreciative of the input.

14. A commenter stated that RCP schools provided the necessary training and competency for new graduates and that RCP professional organizations, as well as other physician organizations, recognized and supported administration of sedatives in analgesic occasions by properly trained RCPs. The board was appreciative of the input.

15. The Executive Director for the Montana Board of Nursing testified that the concern of the Board of Nursing was not that RCPs be prohibited from administering and monitoring conscious IV sedation, but rather that the Board give a declaratory ruling, based on the evidence presented, about the scope of the license regarding such procedures, not whether or not the individual competencies or basic education met certain requirements. In response, the Board determined that it would propose a new rule requiring that RCPs who perform conscious

sedation procedures must have Advanced Cardiac Life Support (ACLS) accreditation.

16. Another commenter testified that it is in the best interests of the Montana public for the health care professions to seek and endorse cross-over practice rather than exclusive areas of practice for such procedures as administering and monitoring conscious IV sedation. The Board agreed.

17. The Board also received a Statement on Physician Authority to Delegate Tasks and Responsibilities from the Board of Medical Examiners which stated in pertinent part that "Those who assist physicians in the practice of medicine, including physical therapists, technicians, or other paramedical specialists, are exempted from licensing requirements if they render services under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine." In its response, the Board stated that RCPs are always under the supervision of physicians when they perform their professional duties.

Analysis

18. Early in the proceedings, the Board defined the question to which it sought answers. Clearly, a registered nurse can administer conscious IV sedation. The question before the Board is whether RCPs can, too, and the Board wanted sufficient facts to be able to compare the minimum pertinent requirements for RN training with the current minimum training requirements for RCPs. The majority of the witnesses felt that graduation and licensure as an RCP qualified the individual for advance training necessary to administer IV sedation to a conscious patient and monitor the patient during the treatment, suggesting that the same approach applied in nursing. The minority did not necessarily disagree about the need for individual training on the job to master the particular protocols in a facility, but emphasized that licensure should serve as proof of qualification to administer conscious IV sedation and monitor the patient, within the dictates of the individual practitioner's employment facility. Virtually every witness requested that the Board define with precision the prerequisites for proper administration and monitoring of conscious IV sedation by RCPs and/or scope of authority conferred by licensure.

19. Mont. Code Ann. §2-15-1750 creates the Montana Board of Respiratory Care Practitioners, sets forth the composition of the Board, the term served, and that the Board is allocated to the Department of Labor and Industry for administrative purposes pursuant to Mont. Code Ann. §2-15-124.

20. Mont. Code Ann. §2-15-121 defines "allocation for administrative purposes" to include the exercise of quasi-judicial, quasi-legislative, licensing, and policy making

functions.

21. Mont. Code Ann. §2-15-102(9) defines "quasi-judicial function" as "an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules, holding hearings, and any other act necessary to the performance of a quasi-judicial function."

22. Mont. Code Ann. §2-15-102(10) defines "quasi-legislative function" as "making or having the power to make rules or set rates and all other acts connected or essential to the proper exercise of a quasi-legislative function".

23. Mont. Code Ann. §37-28-101 states "The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care."

24. Mont. Code Ann. §37-28-102(3)(a) states "Respiratory Care means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician."

25. The Legislature is presumed to know what it is doing.

26. Evidence and testimony received amply demonstrated that the training RCPs receive meets or exceeds that received by Registered Nurses. Position Statements received from physicians, nurses and hospital administrators were of the opinion that Mont. Code Ann. § 37-28-102(3)(a)(i) does include medication for conscious sedation.

Conclusion

27. After consideration of the comments presented in this matter and the testimony and exhibits submitted by the Petitioner and other interested persons, the Board makes the following declaratory ruling.

28. Petitioner is a Nurse Practice Manager for the Montana Board of Nursing and has standing to petition the Board for a declaratory ruling.

29. The Board determined that the act of monitoring a patient during IV conscious sedation is within the scope of practice of a respiratory care practitioner but that the Board would also propose a new rule requiring that RCPs who perform IV conscious sedation must have Advanced Cardiac Life Support accreditation.

DATED this 6th day of January, 2003.

/s/ GREGORY PAULAUSKIS

Gregory Paulauskis, Chairman

BOARD OF RESPIRATORY CARE PRACTITIONERS